

REMARKS

The Final Office Action of March 24, 2009 and Advisory Action dated July 14, 2009 have been carefully considered. Reconsideration of this application, as amended, is respectfully requested.

Applicants submit amendments that are believed to overcome the new rejections set forth under 35 USC §112, second paragraph. The Examiner's confirmation of entry of the amendments presented herein is respectfully requested.

Requirement for Restriction and Withdrawal of Claim 32 is Respectfully Traversed

Applicants respectfully traverse the Examiner's restrictions of the claims presented and withdrawal of claim 32 in view of the amendments thereto presented with this response. As the basis for a restriction, the Examiner urges that the device as claimed can be used in a materially different process, and suggests that disinfecting surgical instruments such as catheters and endoscopes is materially different.

While Applicants respectfully disagree with the Examiner's characterization, and continue to urge that the "device" referred to is a device for disinfecting operatory unit water and lines as recited in claim 1, Applicants have nonetheless added similar limitations to claim 32. Thus the method of amended claim 32 is directed to disinfecting water and lines for medical operatory unit use. Accordingly, Applicants respectfully submit that claim 32 is properly considered in conjunction with the pending apparatus claims as the claimed device and the claimed method both recite limitations directed to disinfecting operatory unit water and lines. Withdrawal of the restriction requirement and consideration of claim 32 is respectfully requested.

In the event the restriction is maintained, Applicants respectfully request that the Examiner establish how the presently-claimed device could be used as alleged. Absent such a showing, Applicants continue to urge that the restriction is improper and the requirement and withdrawal of claim 32 should be reversed.

Summary of Rejections

In the rejections, claims 33 and 34 were rejected under 35 USC §112, second paragraph, as being indefinite. As to the 35 USC §103 rejections, claims 1-3, 5, 7-18, 20-31 and 33-34 were rejected under 35 USC §103(a) as being unpatentable

over Contreras, US 5,824,243 (“Contreras”) in view of Burris, US 5,207,993 (“Burris ‘993”). Claim 1 was rejected under 35 USC §103(a) as being unpatentable over Burris ‘993 in view Contreras. Claims 1-3, 5, 7-16, 18, 20-29, 31 and 33-34 were rejected under 35 USC §103(a) as being unpatentable over Engelhard et al., US 5,942,125 (“Engelhard”) in view of Burris ‘993.

35 USC §112, Second Paragraph, Rejection Overcome

In view of the amendments to claims 33 and 34, Applicants respectfully submit that claims 33 and 34, rejected under 35 USC §112, second paragraph, as being indefinite, now particularly point out and distinctly claim the subject matter regarded as the invention. The objections raised by the Examiner to the claim language are believed to have been addressed in full and Applicants respectfully request that the rejection be withdrawn and that the Examiner acknowledge the same in a subsequent communication.

35 USC §103 Rejections Traversed

In order to establish *prima facie* obviousness, the Examiner must show that each and every limitation of the claim is described or suggested by the prior art or would have been obvious based on the knowledge of those of ordinary skill in the art. *In re Fine*, 837 F. 2d 1071, 1074 (Fed. Cir. 1988). The rejection of claims 1-3, 5, 7–18, 20-31 and 33-34 under 35 USC §103(a) as being unpatentable over Contreras in view of Burris ‘993 is respectfully traversed.

Considering the rejection of **claims 1-3, 5, 7–18, 20-31 and 33-34**, Applicants submit that the suggested combination fails to support all the limitations recited in amended claims 1 or 30. Among other limitations, Applicants respectfully urge that Contreras and Burris ‘993, both alone and in combination, fail to teach the circulation system including a pressure regulator to maintain positive pressure in the circulation passageway. The Examiner continues to assert that the pump 10 of Contreras accomplishes such a function. Moreover, as Applicants have submitted a claim that recites a pressurized circulation loop AND a pressure regulator, Applicants remain puzzled as to the Examiner’s basis for ignoring this fact and urging that Contreras and its recited pump discloses such limitations. Not only is it unclear from Contreras how a pressurized liquid circulation passageway is disclosed (when passageway 27

drains into an unpressurized reservoir), but also how the pump operates as a pressure regulator.

Furthermore, neither Contreras nor Burris '993, alone or in combination, teach a control system including an ozone sensor located in the pressurized liquid circulation passageway, and an alarm to indicate whether the device is operating properly (e.g., claim 1). The Examiner continues to allege such limitations are taught by Burris '993, however, Burris '993 is also not understood to include a pressurized liquid circulation passageway, let alone one that includes an ozone sensor.

In light of the arguments above and amendments to claims 1 and 30, independent claims 1 and 30 are believed to be patentably distinguishable over the combination of Contreras in view of Burris '993. Accordingly, the rejection is again traversed, and Applicants respectfully submit that independent claims 1 and 30 are in condition for allowance, as are all claims dependent from claim 1.

Again, for purposes of brevity, Applicants have not specifically addressed the limitations of each of the dependent claims, but respectfully urge them to be patentable for the reasons set forth relative to claims 1 and 30. Applicants reserve the right to submit further arguments in support of the dependent claims in a subsequent communication or on appeal.

Claim 1 was rejected under 35 USC §103(a) as being unpatentable over Burris '993 in view Contreras. With respect to the rejection of claim 1, Applicants again respectfully urge that the amended independent claim, as described above, is patentably distinguishable over any combination of Burris '993 and Contreras. For purposes of brevity, Applicants have not re-asserted the arguments set forth in detail above, but instead incorporate them herein.

Moreover, in the rejection based upon Burris '993 in view of Contreras, the Examiner selectively picks from the description and thereby ignores the context in which the teachings are set forth. For example, the examiner states at page 14 of the final Office Action, describing the features of '993, "[a] circulation system, i.e., circulation loop, draws liquid from the reservoir 36 via line 16 through pumping system 20 (which is a pressure regulator) and returns purified liquid to the reservoir via line 41. Therefore, the circulation system re-circulates liquid containing dissolved ozone and is capable of continuous circulation (Col. 5 ll. 59-67)." As previously noted, following

this text the '993 description reads, "[w]hen treatment is completed and outflow is desired, valve 44 changes state, preferably in response to an outflow switch so that liquid flows directly to an outlet from pump 43. Generator 15 is preferably turned off while this occurs." Applicants once again respectfully contend that the context of Burris '993 clearly indicates that the invention of Burris '993 is a batch unit and is distinct from a continuous re-circulation device as presently recited in the rejected claim.

Claims 1-3, 5, 7-16, 18, 20-29, 31 and 33-34 were rejected under 35 USC §103(a) as being unpatentable over Engelhard et al., US 5,942,125 ("Engelhard") in view of Burris '993. Applicants continue to submit that the suggested combination fails to support all the limitations recited in claim 1. Among other limitations, Applicants respectfully submit that neither Engelhard nor Burris '993, alone or in combination, teach a control system and an ozone sensor, located in said liquid circulation passageway. Accordingly, claim 1 is urged to be patentably distinguishable over the combination of Engelhard in view of Burris '993, and the rejection is respectfully traversed. Applicants believe amended independent claim 1 is in condition for allowance, as are rejected claims 2-3, 5, 7-14, 16-18, 20-29 and 31, dependent therefrom.

For purposes of brevity additional arguments relative to the dependent claims are once again reserved for a subsequent response or on appeal. However, with respect to the rejection of dependent claim 31, Applicants respectfully contend that the Examiner has improperly characterized the teachings of Engelhard, particularly relative to a control system. Col. 3, lines 57-63 do not appear to teach "a control system wherein the control system, in response to a period of non-use, turns the device off." Applicants seek to clarify this by amendment of claim 31. Accordingly, the rejection of dependent claim 31 is traversed.

In view of the foregoing remarks and amendments, continued examination of this application, and allowance thereof, are earnestly solicited. In the event that additional fees are required as a result of this response, including fees for extensions of time, such fees should be charged to USPTO Deposit Account No. 50-2737 for Basch & Nickerson LLP.

In the event the Examiner considers personal contact advantageous to the timely disposition of this case, the Examiner is hereby authorized to call Applicant's attorney, Duane C. Basch, at Telephone Number (585) 899-3970, Penfield, New York.

Respectfully submitted,

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